



Virginia  
Regulatory  
Town Hall

Periodic Review and  
Exempt Action or Exempt Agency Final Regulation  
Agency Background Document

<b>Agency Name:</b>	Virginia Department of Transportation (Commonwealth Transportation Board)
<b>VAC Chapter Number:</b>	24 VAC 30-540-10
<b>Regulation Title:</b>	Conveyance of Land and Disposal of Improvements
<b>Action Title:</b>	Amend Existing APA-Exempt Regulation
<b>Date:</b>	June 29, 2001

This information is required pursuant to the Administrative Process Act § 9-6.14:25, Executive Order Twenty-Five (98), and Executive Order Fifty-Eight (99) which outline procedures for periodic review of regulations of agencies within the executive branch. Each existing regulation is to be reviewed at least once every three years and measured against the specific public health, safety, and welfare goals assigned by agencies during the promulgation process.

This form should be used where the agency is planning to amend or repeal an existing regulation which is exempt from the Administrative Process Act pursuant to § 9-6.14:4.1.

Note that agency actions exempt pursuant to § 9-6.14:4.1 do not require filing with the Registrar a Notice of Intended Regulatory Action or at the proposed stage. The agency must still, however, comply with the requirements of the Virginia Register Act (§ 9-6.18 *et seq.* of the *Code of Virginia*) and file with the Registrar and publish their final regulation in a style and format conforming with the *Virginia Register Form, Style and Procedure Manual*. The agency must also comply with Executive Order Fifty-Eight (99) which requires an assessment of the regulation's impact on the institution of the family and family stability.

Summary

*Please provide a brief summary of the regulation. There is no need to state each provision; instead give a general description of the regulation and alert the reader to its subject matter and intent.*

This regulation establishes the policies and procedures that VDOT will follow in matters relating to the conveyance of lands and disposal of improvements, including classifications of surplus land, exceptions to policy, and powers delegated to the Commonwealth Transportation Commissioner by the Commonwealth Transportation Board to implement its policies on the subject. The Office of the Attorney General has determined that this regulation is exempt from the APA under § 9-6.14:4.1 B 3.

## Basis

*Please identify the state and/or federal source of legal authority for the regulation. The discussion of this authority should include a description of its scope and the extent to which the authority is mandatory or discretionary. Where applicable, explain where the regulation exceeds the minimum requirements of the state and/or federal mandate.*

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Article 7 of Title 33.1 of the *Code of Virginia* relates to the acquisition of land for transportation projects. For example, under § 33.1-89 of the *Code of Virginia*, the Commonwealth Transportation Commissioner is vested with the power to acquire by purchase, gift, or power of eminent domain such lands, structures, rights-of-way, franchises, easements and other interest in lands, including lands under water and riparian rights, of any person, association, partnership, corporation, or municipality or political subdivision, deemed to be necessary for the construction, reconstruction, alteration, maintenance and repair of the public highways of the Commonwealth.

§ 33.1-89 of the Code of Virginia authorizes the Commonwealth Transportation Commissioner to acquire real property when he determines that it will be required in connection with the construction of a transportation project, and that it would be advantageous to the Commonwealth to acquire such real property. This power is discretionary, although the statute does establish a time limit, allowances for extensions to the time limit, and other procedures for possible resale of the property to the original owners should the project fail to be under contract or constructed within the 20-year statutory time limit. § 33.1-93 of the *Code of Virginia* permits the Commissioner to lease, sell, or exchange residue parcels of land under any terms that he may specify to be in the public interest. The Commonwealth Transportation Board (CTB) has granted to the Commissioner the power to dispose of improvements located on and acquired with any right-of-way in such manner as he may deem most expedient and in the best interest of the Commonwealth.

The specific statutory authority for this regulation cited by the Office of the Attorney General in correspondence dated May 23, 2001, is § 33.1-223.2:2, which stipulates that, when a decision is made to sell or otherwise dispose of surplus real property, the Commonwealth Transportation Commissioner must provide written notice to the appropriate authority where the property is located.

## Public Comment

*Please summarize all public comment received as the result of the Notice of Periodic Review published in the Virginia Register and provide the agency response. Where applicable, describe critical issues or particular areas of concern in the regulation. Also please indicate if an informal advisory group was or will be formed for purposes of assisting in the periodic review or development of a proposal.*

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VDOT received no public comment in response to the Notice of Periodic Review published in *The Virginia Register*. No informal advisory group was formed to assist in the periodic review.

## Effectiveness

*Please provide a description of the specific and measurable goals of the regulation. Detail the effectiveness of the regulation in achieving such goals and the specific reasons the agency has determined that the regulation is essential to protect the health, safety or welfare of citizens. In addition, please indicate whether the regulation is clearly written and easily understandable by the individuals and entities affected. Please state the reasons the agency determined the regulation be amended or terminated.*

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The specific and measurable goals are as follows:

1. To protect the public's health, safety, and welfare with the least possible intrusiveness to the citizens and businesses of the Commonwealth.
2. Is the regulation written clearly and understandably?

Goal 1: VDOT believes that this regulation fulfills the goals listed above. When VDOT acquires property for possible use in transportation projects, it is possible for changes in design, public comment, etc., to affect the amount of land needed once the project is actually ready to be constructed. Therefore, it is reasonable to offer for public sale surplus land with the potential of independent development and with a definite market value. It also minimizes the amount of land held by VDOT that cannot be developed or otherwise used by potential owners. By this action, VDOT is able to recoup some of the land acquisition costs originally incurred.

The regulation also recognizes instances in which the policy concerning public sale of surplus land might conflict with the best interests of the Commonwealth (e.g., when the transfer of property is included in negotiations for other lands needed for right-of-way; or when another state agency expresses a need for such property and is willing to acquire same for a consideration deemed satisfactory to the State Right of Way Engineer). This regulation helps ensure that disposal of such properties is made consistently throughout the Commonwealth, that proper certification procedures are followed, and that such decisions are made with considerations to the best interests of the Commonwealth.

Goal 2: VDOT believes that the regulation is clearly and understandably written. However, VDOT has modified the regulation to enhance clarity by adding the term “residue.” Under another amendment, localities are explicitly mentioned in discussing the exceptions to the “public sale of surplus land” policy. VDOT also updated obsolete references to the title of the Director of Right of Way and Utilities.

## Alternatives

*Please describe the specific alternatives for achieving the purpose of the existing regulation that have been considered as a part of the periodic review process. This description should include an explanation*

*of why such alternatives were rejected and this regulation reflects the least burdensome alternative available for achieving the purpose of the regulation.*

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There is no substitute for a general policy statement outlining the criteria and procedures that VDOT will follow in matters relating to the conveyance of lands and disposal of improvements, including classifications of surplus land, exceptions to policy, and powers delegated to the Commonwealth Transportation Commissioner by the Commonwealth Transportation Board to implement its policies on the subject.

### Statement of Final Agency Action

*Please provide a statement of the final action taken by the agency, including the date the action was taken, the name of the agency taking the action, and the title of the regulation.*

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VDOT amended the regulation entitled *Conveyance of Land and Disposal of Improvements* by signature of the Deputy Commissioner on June 28, 2001. Under the rules established in *the Registrar's Form, Style, and Procedure Manual*, regulations exempt from the APA under the provisions of § 9-6.14:4.1 B become effective upon filing, so the amended regulation will become effective upon receipt by the Registrar. VDOT expects the regulation will be published in *The Virginia Register* during July or August of 2001.

### Additional Information

*Please indicate that the text of the proposed regulation, the reporting forms the agency intends to incorporate or use in administering the proposed regulation, a copy of any documents to be incorporated by reference are attached.*

*Please state that the Office of the Attorney General (OAG) has certified that the agency has the statutory authority to promulgate the proposed regulation and that it comports with applicable state and/or federal law. Note that the OAG's certification is not required for Marine Resources Commission regulations.*

*If the exemption claimed falls under § 9-6.14:4.1(C) (4)(c) of the APA please include the federal law or regulations being relied upon for the final agency action.*

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The text of the regulation is attached. The Office of the Attorney General originally reviewed this regulation in 1993, and found that it was exempt from the APA under the following exemption: § 9-6.14:4.1 B (3). The Office of the Attorney General (OAG) reviewed the amended regulation and issued an opinion dated May 23, 2001, that the proposed changes were acceptable within the statutory authority cited in a suggested revised sentence, and that the exemption previously identified was reaffirmed. VDOT incorporated the suggestions made by the OAG into the revisions shown.

### Family Impact Statement

*Please provide a preliminary analysis of the proposed regulatory action that assesses the potential impact on the institution of the family and family stability including the extent to which the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of*

*responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.*

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This regulation has no effect on the institution of the family and family stability, nor does it affect any of the factors outlined above.